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Mickelson Gerald Wayne v Public Prosecutor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05(M)-460–09 OF 2018
YAACOB MD SAM, ZABARIAH MOHD AND RAVINTHRAN JJCA
17 NOVEMBER 2020

C *Criminal Procedure — Appeal — Appeal against conviction and sentence — Murder — Appellant convicted and sentenced to death under s 302 of the Penal Code — Whether appellant's statement to hotel staff constituted confession and therefore admissible — Whether investigating officer failed to investigate appellant's injuries — Whether learned trial judge erred in his finding in respect of* D *mens rea — Whether learned trial judge erred in holding that appellant's act fell under limb (c) to s 300 of the Penal Code — Whether prosecution failed to prove that fatal injury was intended injury — Whether learned trial judge did not properly appreciate defence of appellant and misdirected himself — Penal Code ss 300 & 302*

E

Evidence — Confession — Admissibility of confession — Admission of killing — Whether purported appellant's statement to hotel staff constituted confession — Whether admissible — Evidence Act 1950 ss 17(2), 24, 25 & 26

F

This was an appeal against the decision of the learned trial judge in convicting and sentencing the appellant to death for the offence of murder under s 302 of the Penal Code ('the Code'). The offence was committed by the appellant in a hotel room located in Kuala Lumpur and the deceased was his ex-wife. The G learned trial judge's decision was based on the circumstantial evidence, inter alia: (a) the evidence of the pathologist who testified that the cause of death of the deceased was 'compression of the neck' which he explained was the result of manual strangulation; and (b) the evidence of a hotel staff ('SP2') who testified that the appellant told her that he hit the deceased with a lamp shade and H strangled her and further confessed that he killed the deceased ('the purported statement'). The only defence raised by the appellant was self-defence (private defence under s 96 of the Code) but the learned trial judge rejected this defence. In the present appeal, the appellant submitted that: (a) the learned trial judge should not have considered the purported statement as confession I because the appellant could not speak in Malay and therefore could not have used the word *cekik* when questioned by SP2 as to how the deceased died ('the first issue'); (b) it was the appellant's case that he was physically attacked by his deceased ex-wife who was half times heavier than him but the investigating officer failed to investigate the injuries suffered by the appellant and refer him

to a medical doctor ('the second issue'); (c) the learned trial judge erred in his finding in respect of mens rea element ie in holding that the appellant's act fell under limb (c) of s 300 of the Penal Code when the prosecution failed to prove that the fatal injury was an intended injury ('the third issue'); and (d) the learned trial judge did not properly appreciate the defence of the appellant and misdirected himself ('the fourth issue'). A B

Held, dismissing the appeal, and affirming the conviction and sentence:

(1) The fact in issue at the trial was whether the appellant murdered the deceased. The appellant told SP2 that he had killed his wife and that he hit her head with a lamp and strangled her. Such admission raised an inference that he alone was directly responsible for the death of the deceased. The admission therefore came squarely within the ambit of s 17(2) of the Evidence Act 1950 ('the EA') and also the test laid down by the Privy Council in the case of *Anandagoda v The Queen* [1962] MLJ 289. It was therefore a confession and admissible although no caution was administered as SP2 was not a police officer or a person in authority. It was voluntarily given by the appellant to SP2. In the premises, such admission was not excluded by ss 24, 25 and 26 of the EA (see para 17). C D

(2) It was not the evidence of SP2 that the appellant uttered *cekik* or otherwise spoke in Malay. SP2 quoted verbatim the English words of the appellant who said that 'I killed my wife'. It ought to be noted that no challenge was successfully made that SP2 was not sufficiently proficient in English to be able to recall the said words. The appellant denied saying anything to SP2 but the trial judge accepted the latter's evidence. There was no reason for the appellate court to interfere with this finding of fact as SP2 was a totally disinterested witness. In the premises, there was no merit in the first issue (see paras 18–19). E F

(3) The investigating officer agreed with the appellant that in cases involving a physical fight, parties should be referred for medical examination but she said that she did not refer the appellant to a doctor because she did not notice any injury on him. Further, it was not put to her by counsel for the appellant during cross-examination that appellant told her that he suffered injuries. The fact that the investigating officer did not notice any injury or blood on the appellant meant that he was not injured as found by the learned trial judge. The DNA evidence which showed that the appellant's blood was found in the deceased's fingernails did not prove that the appellant was injured in the way that he described. The appellant was locked in a struggle with the deceased, therefore, it was highly probable that the appellant was scratched. There was no merit in the second issue (see paras 21–24). G H I

(4) The pathologist explained that the cause of death was fatal compression of the neck which was caused by manual strangulation of the victim. The

serious injuries that the deceased suffered did not point to a momentary squeeze at the neck of the deceased in the heat of a struggle. As the medical evidence proved the cause of death was manual strangulation and the appellant and the deceased were locked in a physical struggle, the only inference that could be drawn was that the appellant had strangled the deceased to death. There was no room to argue that the infliction of the said bodily injury was unintentional or accidental. Therefore, there was no merit in the third issue (see paras 29 & 31–32).

(5) There was nothing in the judgment of the trial judge that suggested that he misapplied the principles that were applicable to the defence of private defence. The learned trial judge said that no injury was seen on the appellant. The trial judge further noted the evidence of the appellant that he was on top of the deceased at the bed. Momentary choking or pushing at the neck of the deceased in the heat of the struggle could not have caused death by strangulation. The appellant could have extricated himself and moved away and he would not have been in any danger. In addition, s 99(4) of the Code prohibited infliction of unnecessary harm when protecting oneself. There was no reason for the court to interfere with the learned trial judge's finding of fact as it was consistent with the medical evidence and the circumstantial evidence. There was no merit in the fourth issue (see paras 36–39).

[Bahasa Malaysia summary

Ini adalah rayuan terhadap keputusan hakim bicara yang bijaksana yang mensabitkan perayu bersalah dan menjatuhkan hukuman mati ke atas perayu atas kesalahan membunuh di bawah s 302 Kanun Keseksaan ('Kanun'). Kesalahan tersebut dilakukan oleh perayu di sebuah bilik hotel di Kuala Lumpur dan si mati adalah bekas isteri perayu. Keputusan hakim bicara yang bijaksana didasarkan pada keterangan ikut keadaan, antara lain: (a) keterangan ahli patologi yang menyatakan bahawa penyebab kematian si mati adalah 'tekanan pada leher' yang dijelaskannya adalah hasil daripada cekikan secara manual; dan (b) keterangan kakitangan hotel ('SP2') yang memberi keterangan bahawa perayu memberitahunya bahawa dia memukul si mati dengan penutup lampu dan mencekiknya dan seterusnya mengaku bahawa dia membunuh si mati ('pernyataan yang dinyatakan'). Satu-satunya pembelaan yang dikemukakan oleh perayu adalah pertahanan diri (pertahanan persendirian berdasarkan s 96 Kanun) tetapi hakim bicara yang bijaksana menolak pembelaan ini. Dalam rayuan ini, perayu berhujah bahawa: (a) hakim bicara yang bijaksana seharusnya tidak menganggap pernyataan yang dinyatakan sebagai pengakuan kerana perayu tidak mampu bertutur dalam bahasa Melayu dan oleh itu tidak dapat menggunakan perkataan 'cekik' ketika disoal oleh SP2 tentang bagaimana si mati meninggal dunia ('isu pertama'); (b) kes perayu adalah bahawa dia diserang secara fizikal oleh bekas isterinya yang setengah kali ganda lebih berat daripadanya tetapi pegawai penyiasat

gagal menyiasat kecederaan yang dialami perayu dan merujuknya kepada doktor perubatan ('isu kedua'); (c) hakim bicara yang bijaksana terkhilaf dalam penemuannya berkenaan dengan elemen mens rea iaitu dengan menyatakan bahawa tindakan perayu jatuh di bawah cabang (c) s 300 Kanun Keseksaan sedangkan pihak pendakwaan gagal membuktikan bahawa kecederaan maut tersebut dilakukan dengan niat ('isu ketiga'); dan (d) hakim bicara yang bijaksana tidak menghargai pembelaan perayu dengan betul dan telah tersalah arah dirinya ('isu keempat').

Diputuskan, menolak rayuan dan mengesahkan sabitan dan hukuman:

(1) Fakta yang menjadi isu adalah sama ada perayu membunuh si mati. Perayu memberitahu SP2 bahawa dia telah membunuh isterinya dan bahawa dia memukul kepalanya dengan lampu dan mencekiknya. Pengakuan sedemikian menimbulkan kesimpulan bahawa dia sendiri yang bertanggungjawab secara langsung atas kematian si mati. Oleh itu, pengakuan tersebut secara tepat jatuh di bawah ruang lingkup s 17(2) Akta Keterangan 1950 ('AK') dan juga ujian yang ditetapkan oleh Privy Council dalam kes *Anandagoda v The Queen* [1962] MLJ 289. Oleh itu, ia adalah pengakuan dan boleh diterima walaupun tiada pernyataan beramaran diberikan kerana SP2 bukan pegawai polis atau orang yang berkuasa. Pengakuan tersebut secara sukarela diberikan oleh perayu kepada SP2. Berdasarkan premis tersebut, pengakuan tersebut tidak dikecualikan oleh ss 24, 25 dan 26 AK (lihat perenggan 17).

(2) SP2 tidak memberikan keterangan bahawa perayu mengucapkan perkataan 'cekik' atau bercakap dalam bahasa Melayu. SP2 memetik kata-kata Bahasa Inggeris perayu yang mengatakan bahawa *I killed my wife*. Harus diingat bahawa tidak ada tentangan yang berjaya dibuat bahawa SP2 tidak cukup mahir berbahasa Inggeris yang membolehkannya untuk mengingat kembali kata-kata tersebut. Perayu menafikan mengatakan apa-apa kepada SP2 tetapi hakim bicara menerima keterangan SP2. Tidak ada alasan bagi mahkamah di peringkat rayuan untuk mengganggu penemuan fakta ini kerana SP2 adalah saksi yang sama sekali tidak mempunyai kepentingan. Berdasarkan dapatan di atas, tidak terdapat merit dalam isu pertama (lihat perenggan 18–19).

(3) Pegawai penyiasat bersetuju dengan perayu bahawa dalam kes-kes yang melibatkan pergelutan fizikal, pihak-pihak harus dirujuk untuk pemeriksaan perubatan tetapi dia mengatakan bahawa dia tidak merujuk perayu kepada doktor kerana dia tidak menyedari terdapat kecederaan pada diri perayu. Selanjutnya, peguam perayu tidak menyatakan kepadanya semasa pemeriksaan balas bahawa perayu mengatakan kepadanya bahawa dia mengalami kecederaan. Fakta bahawa pegawai penyiasat tidak menyedari kecederaan atau luka pada perayu bermaksud

bahawa dia tidak cedera seperti dapatan hakim bicara yang bijaksana. Keterangan DNA yang menunjukkan bahawa darah perayu dijumpai di dalam kuku si mati tidak membuktikan bahawa perayu cedera dengan cara yang dijelaskannya. Perayu bergelut dengan si mati, oleh itu, terdapat kemungkinan yang tinggi perayu tergores. Tiada merit dalam isu kedua (lihat perenggan 21–24).

(4) Ahli patologi menjelaskan bahawa penyebab kematian adalah tekanan pada leher yang fatal yang disebabkan oleh cekikan ke atas mangsa secara manual. Kecederaan serius yang dialami oleh si mati tidak menunjukkan cengkaman seketika ke atas leher si mati dalam pergelutan. Oleh kerana keterangan perubatan membuktikan penyebab kematian adalah cekikan manual dan perayu dan si mati terlibat dalam pergelutan fizikal, satu-satunya inferens yang boleh dibuat ialah perayu telah mencekik si mati sehingga mati. Tidak ada ruang untuk mendakwa bahawa tindakan mencederakan tubuh badan tersebut adalah tidak disengajakan atau kemalangan. Oleh itu, tiada merit dalam isu ketiga (lihat perenggan 29 & 31–32).

(5) Tiada apa-apa dalam penghakiman hakim bicara yang menunjukkan bahawa beliau salah dalam menerapkan prinsip-prinsip yang terpakai ke atas pembelaan pertahanan persendirian. Hakim bicara yang bijaksana mengatakan bahawa tidak ada kecederaan yang dilihat pada perayu. Hakim bicara selanjutnya memperhatikan keterangan perayu bahawa dia berada di atas si mati di tempat tidur. Cekikan seketika atau menekan leher si mati dalam pergelutan tidak mungkin menyebabkan kematian akibat dicekik. Perayu boleh mengasingkan diri dan menjauhkan diri dan dia tidak akan berada dalam bahaya. Sebagai tambahan, s 99(4) Kanun melarang penggunaan bahaya yang berlebihan ketika melindungi diri. Tidak ada alasan bagi mahkamah untuk mengganggu penemuan fakta hakim bicara yang bijaksana kerana ia sejajar dengan keterangan perubatan dan keterangan ikut keadaan. Tidak terdapat merit dalam isu keempat (lihat perenggan 36–39).]

Cases referred to

Anandagoda v The Queen [1962] MLJ 289, PC (refd)
Chan King Yu v PP [2009] 1 MLJ 457; [2008] 2 MLRA 695, FC (distd)
Iskandar Danial bin Md Yunos dan satu lagi lwn Pendakwa Raya [2019] 2 MLJ 728, CA (refd)
Lee Kwan Woh v PP [2009] 5 MLJ 301, FC (distd)
Lee Thian Beng v PP [1972] 1 MLJ 248, FC (refd)
Mohamed Yasin bin Hussin v PP [1976] 1 MLJ 156, PC (refd)
Palmer v R [1971] 1 All ER 1077, PC (refd)
R v Donaldson (1976) 64 Cr App Rep 59, CA (refd)
R v Sharp [1988] 1 All ER 65, HL (refd)
Virsa Singh v The State of Punjab 1958 SCR 1495, SC (refd)

Legislation referred to

Evidence Act 1950 ss 17, 17(2), 24, 25, 26, 105
Penal Code ss 96, 99(4), 100, 102, 300, 300(a), (b), (c), (d), 304, 304A

Appeal from: Criminal Trial No WA-45B-39–06 of 2017 (High Court, Kuala Lumpur)

T Vijayandran (T Vijay & Co) for the appellant.
Nurshafini bt Mustafha (Mohd Zain bin Ibrahim with him) for the respondent.

Ravinthran JCA:

INTRODUCTION

[1] The appellant was tried for the offence of the murder of his ex-wife. Both of them were 61 years old at the material time. The appellant was convicted at the end of the trial and sentenced to death. The charge read as follows:

> Bahawa kamu pada 26 November 2016 antara jam lebih kurang 5.00 pagi hingga 11.45 pagi, bertempat di bilik nombor 1528 di St Giles, The Garden Grand Hotel & Residences, Mid Valley City, Lingkaran Syed Putra, 59200 di dalam daerah Brickfields, dalam Bandaraya Kuala Lumpur, di negeri Wilayah Persekutuan, didapati telah membunuh Guilda Mickelson, Pasport No 530677943. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah s 302 Kanun Keseksaan dan boleh dihukum di bawah Seksyen yang sama.

CASE OF THE PROSECUTION

[2] The essential evidence tendered by the prosecution as summarized by the learned High Court judge was as follows. Both the appellant and his ex-wife (the deceased) are American citizens. At the material time, the deceased stayed in a suite (room No 1528) at St Giles, Gardens Hotel & Residences, Brickfields. On 26 November 2016 at about 11.45am, the operator on duty, SP1 (Nursiyah bt Amsun) received a call through the hotel intercom from room No 1528. The male caller asked for the police to be sent to his suite because there was 'trouble'. SP1 notified the duty manager, SP2 (Prusothmanan a/l Tamil Arasu). SP2 told her to call the security officer, SP6 (Jeganathan a/l Subramaniam). Both SP2 and SP6 went to room 1528. Upon opening the door, the guest, later identified as the appellant, told him that his 'wife' had died and she was on the bed inside the bedroom. SP2 entered the bedroom and saw a bloodied body on the bed. He asked the appellant how she died. He told him that he killed her. His crucial evidence on the confession of the appellant is as follows:

Q: Kemudian?

A: Lepas itu saya keluar dari bilik tu macam mana dia boleh mati dan dia cakap dia dah bunuh bini dia.

Mahkamah: The words you asked him and he replied?

A: I asked him 'how come you wife is dead? And he reply 'I kill my wife'.

Q: So after that?

A: Kemudian saya tanya dia macam-mana? Dia cakap dia ambil lampu table pukul di kepala dan cekik.

[3] SP2 ordered SP6 to guard the appellant and notified his superiors, ie the general manager, the director of rooms and front office manager. He then waited for the police to arrive. ASP Arikrishnan a/l Apparau ('SP7') arrived at the scene around 2.45pm. He found the appellant, the deceased and the security escort in the room. He said the deceased had died by that time. He arrested the appellant and brought him to the police station. SP7 also recorded the cautioned statement of the appellant. The investigating officer of the case, SP9 (ASP Nor Azuha bt Zakerya) ordered evidence to be collected from the said room and arranged for the post mortem examination of the deceased. The pathologist who conducted the autopsy was Dr Prashanti Naresh Samberkar ('SP3'). He said that the cause of death of the deceased was 'compression of the neck' which he explained was the result of manual strangulation.

FINDINGS OF THE HIGH COURT AT THE END OF THE CASE FOR THE PROSECUTION

[4] The learned trial judge identified the ingredients of the offence as follows:

(a) that Guilda Mickelson is the deceased;

(b) that she died due to the injuries found on her; and

(c) that the injuries were inflicted in the circumstances set out under s 300(a)-(d) of the Penal Code and that exceptions to the provision did not apply.

[5] He found that the prosecution proved indisputably that the deceased was Guilda Mickelson. He also found that the cause of death was due to manual strangulation based on the testimony of SP3, the forensic pathologist. On the crucial element of causation, the finding of the trial judge was as follows. His Lordship directed himself that the prosecution's case was built on circumstantial evidence as there were no eye witnesses. He considered the following evidence tendered by the prosecution. The appellant was alone in the said hotel suite with his ex-wife. The hotel staff went to the suite upon the request of the appellant for police to be called because there was some 'trouble'.

Upon arrival at the room, the appellant told the hotel staff (SP2 and SP6) that his ex-wife had died. SP2 saw the body of the deceased on the bed covered with some blood stains. When asked how she died, the appellant told SP2 that he killed her. The appellant told her that he hit her with a lamp shade and strangled her. The learned trial judge deemed the statement of the appellant to SP2 to be a confession under s 17 of the Evidence Act 1950. He ruled that the confession is not barred by s 24 of the Evidence Act 1950 as SP2 is not a person in authority. He thus found that the appellant had caused the death of the deceased.

[6] In respect of the issue whether the act of the appellant came within s 300 of the Penal Code, he considered the medical evidence. The forensic pathologist said that the compression of the neck suffered by the deceased because of manual strangulation would in the ordinary course of nature cause death. The forensic pathologist also found that the head injury to the deceased, while not causing her death, could have rendered the deceased to be partially unconscious at the material time. The learned trial judge thus found that the act of the appellant in strangling the injured deceased came within the third limb of s 300 of the Penal Code. He also found that on the evidence before him at the prima facie stage, none of the exceptions in s 300 that precludes the act of homicide from amounting to murder applied. In the premises, he called for the defence of the appellant.

THE DEFENCE

[7] The appellant gave sworn evidence. The only witness he called to testify on his behalf was his wife from the Philippines. His defence, as summarized by the learned High Court judge was as follows. He married the deceased in 1982. They were divorced in 2011. However, he said that the deceased depended on him for all her needs. She followed him to Malaysia on a dependent visa in 2013. She stayed for months at various places in Malaysia. The last place she stayed was at the said hotel suite. The appellant's work required him to travel frequently outside the country. He only stayed with the deceased in the said suite when he was in town. The appellant married his Filipino wife about six months prior to the incident in question. His Filipino wife did not follow him to Malaysia. She continued to remain in the Philippines.

[8] The day prior to the incident was the appellant's last day with Ericson Malaysia. He was in the room with the deceased that morning. He left for office to settle work matters later. After that, he went to the airport in the evening to fly to the Philippines for a job interview. As for the deceased, she had earlier refused to fly back to the United States although her visa had expired. Instead she wanted to go to Singapore. However, as he was about to check in to fly to Manila, the deceased sent a message and asked him to call her. She told him that

she would not go to Singapore. She threatened to create a scene. Instead, she asked him to accompany her to the United States. The appellant returned to the said hotel suite instead of taking his scheduled flight to Manila. He talked to the deceased between 7.30pm to 8pm. After that, he went outside the room and spoke to his wife in Manila for three hours until 11.30pm. He then re-entered the hotel suite to pick up his suit case but the deceased engaged him in conversation. His version of the events that led to the death of the deceased is as follows.

[9] He said the deceased had earlier taken USD150,000 from him as 'ransom'. She did not want him to leave her. They argued but also prayed in the room together until 4am. At 5am, the appellant tried to leave the suite as he wanted to go the airport to meet his Filipino wife who was arriving later in the morning. However, he was prevented by the deceased and a violent physical struggle ensued. He said the deceased was much bigger than him. She weighed 93kg. In comparison, he only weighed 60kg. She threw him across the living room. She pulled him to the bedroom and threw him on the bed. She bit his hand and put her hand inside his mouth and attempted to push back his tongue. He managed to pry open her mouth and pull his hand out. In respect of the fatal neck compression that the deceased suffered, the appellant said he did not intend to kill but that he was defending himself. He said as follows as recorded in the notes of proceedings and reproduced by the learned trial judge:

> She ripped my T-shirt and soon she already got her left hand like that. Then she grabbed and held me with her other hand on the other side. So she got me on hold and hard to show on yourself but she got me on the strength hold and her fingers dug into the back of my neck and back lower path of the scalp. And she pushing my tongue up closing of my throat.
>
> My hand will go everywhere around her arms cross her shoulders to try to get away from her.
>
> The first thing I used to do is just to get away from her I was pushing everywhere I could and slippering up her shoulder and I couldn't keep her off her hands and I'm leaning over like 90 degree angle.

[10] After the appellant managed to release himself, he fell on the floor. He heard the deceased coughing deeply and saw her falling to the bedroom floor. The appellant crawled to the living room and remained there for half an hour. When he returned to the bedroom, he realised that the deceased was motionless. He noticed blood on her head. However, he said he wanted to rest and he went back to the living room again. He only called the hotel staff late in the morning around 11.45am to alert them about the incident.

FINDINGS OF THE HIGH COURT JUDGE AT THE END OF THE DEFENCE

[11] The only defence raised by the appellant was self-defence which is known as private defence under s 96 of the Penal Code. The learned trial judge rejected this defence and found that the appellant failed to raise a reasonable doubt on the case of the prosecution that he murdered the deceased. His reasons, briefly stated are as follows. Although, the appellant said that the deceased grabbed him and threw him to the bed and attacked him by grabbing his neck from behind and pushing her hand inside his mouth until his tongue was pushed back, the police officers who saw him that day did not notice any injury on him. The learned trial judge also noted that it was the evidence of the appellant that he was on top of the deceased when he allegedly tried to free himself from her grasp. The medical evidence established that the deceased died from manual strangulation. It was not due to head injury or any other reason. In the circumstances, he did not believe that the appellant acted in self-defence in causing the death of the deceased.

ISSUES

[12] Counsel for the appellant raised five main issues before us in arguing that the High Court erred in its decision. We shall consider below each of the said issues by turn.

Confession

[13] Counsel for the appellant submitted that the purported statement of the appellant to the duty manager ('SP2') that he had 'killed his wife' and that he had strangled (*cekik*) her should not have been considered as a confession by the learned trial judge. The statement was considered and admitted as a confession by the learned trial judge who said as follows:

> [22] It is to be noted that PW2 had no relation to this couple. *The accused having confessed to PW2 his complicity in the deceased's murder, for me, was tantamount to a confession admissible under the Evidence Act, 1950*. His evidence that the accused was the one who caused the injury to the deceased and killed the deceased would certainly have carried weight and I have no hesitation in accepting it.

The argument by counsel for the appellant is as follows. The appellant cannot speak in Malay and therefore could not have used the word *cekik* when questioned by PW2 as to how the deceased died. He said that a statement that constitutes a confession should be put before the judge in complete form. In support, he cited the English Court of Appeal case of *R v Donaldson* (1976) 64 Cr App Rep 59 where James LJ said as follows:

> When the Crown adduce a statement relied upon as an admission it is for the jury to consider the whole statement including any passages that contain qualifications

A or explanations favourable to the defendant, that bear upon the passages relied upon by the prosecution as an admission, and it is for the jury to decide whether the statement viewed as a whole constitutes an admission. To this extent the statement may be said to be evidence of the facts stated therein.

B **[14]** We note that in the above-mentioned case, the accused made a statement to the police in which he partly admitted and partly denied the charge made against him. In the case of *R v Sharp* [1988] 1 All ER 65 which was also cited by counsel for the appellant, the above-mentioned case was quoted with approval by the House of Lords. However, in that case as well a C partially incriminating and partially exculpatory statement was made by the accused to the police. The headnote summary of the holding of the House of Lords reads as follows:

... the whole of the statement constituted evidence of the truth of the facts it asserted D and the judge should direct the jury that both the incriminating parts and the excuses or explanations had to be considered in determining where the truth lay, although where appropriate, as it usually would be, the judge might and should, point out that the incriminating parts were likely to be true whereas the excuses did not carry the same weight.

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[15] Similarly, other cases cited in the above mentioned two English cases concerned statements made to the police by an accused person. Coming back to the instant case, the salient point to note is that it is undisputed that the admission in question is not contained in a statement to the police or to a F person in authority. SP2 is merely a hotel staff. The confession was given by the appellant voluntarily in response to the question of SP2 about the manner that the deceased died in the hotel suite. The appellant said that he 'killed' her. When SP2 queried further, the appellant said he hit her with a table lamp and strangled (*cekik*) her. The statement of the appellant to SP2 was deemed a G confession under s 17 of the Evidence Act 1950 by the learned trial judge. The provision reads as follows:

(a) an admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any H of the persons and under the circumstances hereinafter mentioned.

(b) a confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.

I (c) subsection (2) shall have no application in Sarawak.

[16] In the well-known case of *Anandagoda v The Queen* [1962] MLJ 289 from Ceylon, the Privy Council in considering the very same provision, said as follows as to what constitutes an admission:

The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts. In this connection their Lordships consider that the view expressed by *Gratiaen J in Seyadu v King* [1951] 53 NLR 251, 253:

> The test of whether an 'admission' amounts to a 'confession' within the meaning of s 17(2) must be decided by reference only to its own intrinsic terms is correct. It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession even although the accused at the same time protests his innocence.

[17] The fact in issue at the trial was whether the appellant murdered the deceased. The appellant told SP2 that he had killed his wife. He added that he hit her head with a lamp and strangled her. The admission of the appellant to SP2 raised an inference that he alone was directly responsible for the death of the deceased. The admission of the appellant therefore comes squarely within the ambit of s 17(2) and also the test laid down by the Privy Council in the above-mentioned case. It is therefore a confession. It is therefore admissible although no caution was administered as SP2 is not a police officer or a person in authority. It was voluntarily given by the appellant to SP2. In the premises, its admission was not excluded by ss 24–26 of the Evidence Act 1950.

[18] The other point strongly argued by counsel for the appellant is that the appellant could not have used the word *cekik* as the appellant does not know any Malay. However, during cross-examination, SP2 said that the appellant spoke in English. He could not recall the exact English word used by the appellant. Therefore, it is not the evidence of SP2 that the appellant uttered *cekik* or otherwise spoke in Malay. It must be noted that the SP2 gave evidence in a mix of English and Malay. In any event, even when giving evidence in Malay during examination in chief, he quoted the exact words of the appellant in English who told him that he 'killed' his wife. Therefore, reading the statement made to the appellant as a whole, it suggested very strongly that it was the appellant who caused the death of the deceased. We also find it unnecessary that SP2 could not recall the exact English word used by the appellant when referring to *cekik*. In the case of *Iskandar Danial bin Md Yunos and anor v Public Prosecutor* [2019] 2 MLJ 728, this court admitted a confession made to a civilian witness although the witness did not quote it verbatim when giving evidence in court. The court said as follows:

> Ditegaskan ... pengakuan tersebut masih tidak boleh diterima pakai kerana tidak dikemukakan secara verbati, (kes *Lemanit v Pendakwa Raya* [1965] 2 MLJ 26, dan *Ho Sek Kong v Pendakwa Raya* [2011] 5 MLJ 35 disandarkan untuk menyokong saranan). Kami tidak diyakinkan dengan penghujahan tersebut ... Keterangan mereka merupakan keterangan langsung di bawah s 60 Akta Keterangan 1950. Selain itu, keterangan sedemikian merupakan keterangan yang relevan dan boleh juga diterima masuk di bawah s 8 dan s 9 Akta Keterangan 1950. Pada hemat kami, dalam kes-kes sebegini yang biasanya melibatkan keterangan ikut keadaan boleh dipermudahkan jika adanya keterangan langsung daripada tertuduh mengenai apa yang dilakukan, secara terus atau sebaliknya. Lebih-lebih lagi jika terdapatnya pengakuan daripada tertuduh itu sendiri. Tertakluk kepada syarat-syarat yang termaktub dalam perundangan, keterangan yang bernilai ini tidak seharusnya dibuang begitu saja tanpa alasan yang kukuh, yang pada kami yang gagal ditunjukkan oleh kedua-dua peguam.

[19] In any event, as we said earlier, SP2 quoted verbatim the English words of the appellant who said that 'I killed my wife'. It must be noted that no challenge was successfully made that SP2 was not sufficiently proficient in English to be able to recall the said words. The appellant denied saying anything to SP2 but the trial judge accepted the latter's evidence. We see no reason to interfere with this finding of fact as SP2 is a totally disinterested witness. In the premises, we find no merit in the first issue. It was properly admitted and considered by the trial judge.

Failure to investigate injuries of the appellant

[20] The second issue argued by counsel for the appellant is that the investigating officer failed to investigate the injuries suffered by the appellant and refer him to a medical doctor. The alleged failure of the investigating officer is made an issue because it is the case for the defence that the appellant was physically attacked by his deceased ex-wife who was one and the half times heavier than him. But the learned trial judge disbelieved the appellant that he acted in self-defence and one of his reasons was that the appellant was not injured.

[21] Counsel for the appellant referred to the evidence of the investigating officer. The investigating officer agreed during cross-examination that it was the deceased who started the fight by attacking the appellant. She also agreed that she did not refer the appellant to a doctor to examine whether he suffered any injuries during the fight. However, the investigating officer has no personal knowledge about what transpired in the room between the appellant and the deceased. During re-examination, she said that it was the appellant who told her that the deceased started the fight. Although she agreed with counsel for appellant that in cases involving a physical fight, parties should be referred for medical examination, she said that she did not refer the appellant to a doctor

because she did not notice any injury on him including the alleged injuries on his mouth and lips. The appellant told the court that he told the investigating officer that he suffered various injuries. But the investigating officer did not say that the appellant complained to him that he suffered injuries. It was not put to her by counsel for the appellant during cross-examination that appellant made such a complaint either. The investigating officer was unswerving in her evidence that she noticed no injuries on the appellant. Injury to the mouth and lips and other parts of the body after being allegedly attacked and thrown about by someone who was one and the half times one's size would have been in all likelihood noticed by the investigating officer. The force that was applied by the deceased was described by the appellant as follows:

> The force was sufficient enough, I had a bump on the my head when I hit the wall, I had gash on my shoulder where I hit the shelf … I had a gash in my side by my ribs … and the back my shoulder had scrapped the wall.
>
> Q: Why these injuries on your body? Can you explain to the court how you got all those injuries?
>
> A: Because she threw me that hard. Remember Guilda is 150 percent my size. She weighed 1/2 times more than I do. She was running and she put all her weight to it.
>
> …
>
> Q: The injury because of the force caused by Guilda?
>
> A: Correct. It literally threw me across the room. The distance at about 8–9 feet.

[22] The appellant also said that he suffered a bleeding cut on his lower left leg after he stumbled over the treadmill machine during struggle with the deceased. The fact that the investigating officer did not notice any injury or blood on the appellant meant that he was not injured as found by the learned trial judge. The appellant did not tell the arresting officer ('SP7') who came to the hotel suite about having been injured either. When cross-examined why he did not disclose his injuries, his unconvincing answer was that SP7 never asked him about it. But in the same breadth, he said that he told SP7 two days later about the injury on his leg when the latter recorded his statement. If it was true that the appellant had suffered the injuries that he described, it is incredible that he did not seek medical attention through the police officers that he encountered on the same day.

[23] Counsel for the appellant also argued that the DNA evidence established that blood belonging to the appellant was found in the fingernails of the deceased. In our view, the DNA evidence does not prove that the appellant was injured in the way that he described. The appellant said that both of them were locked in a struggle as she grabbed his neck with her hands. Therefore, it is highly probable that the appellant was scratched. Assuming that

the appellant suffered serious wounds that caused him to bleed, bloods stains belonging to him would have been found not only on the clothes of the deceased but also on the floor.

[24] The cases of *Chan King Yu v Public Prosecutor* [2009] 1 MLJ 457; [2008] 2 MLRA 695 and *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301 cited by counsel for the appellant can be distinguished. In *Chan King Yu v Public Prosecutor*, the appellant was convicted by the High Court on evidence that he was in occupation of a hotel room in which drugs were found. From the moment of the arrest, the appellant told the police that the plastic bag in which drugs were found belonged to one Man Chai who was coming to collect them. The investigating officer in that case admitted that the appellant said the same thing in the cautioned statement. The investigating officer could have investigated Man Chai but failed to do so. On this ground and in view of other infirmities in the case for the prosecution, the Federal Court set aside the conviction. In *Lee Kwan Woh v Public Prosecutor*, the basis of the prosecution's case was that the appellant was arrested as he emerged from a car holding a bag that contained drugs. The appellant told the investigating officer that he was arrested in the compound of the house and not when he emerged from the car. Furthermore, one of the police detectives told the investigating officer that drugs were recovered from the same house earlier in the day prior to the arrest of the appellant. The investigating officer failed to investigate the claim of the appellant. For this reason and other reasons, the appeal was allowed by the Federal Court. However, in the instant case, the investigating officer said that the appellant never complained about being injured and she did not notice injuries on him either. For that reason, she would have had no reason to refer the appellant to a doctor for medical examination. Therefore, we find no merit in the issue taken by counsel for the appellant.

Mens rea element

[25] The third issue argued by counsel for the appellant is that the trial judge made erroneous finding in respect of the mens rea element. The learned trial judge found that the act of the appellant fell under limb (c) of s 300, ie 'with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death'. The argument of counsel for the appellant is as follows. For the case to fall under limb (c), there must be evidence that the appellant intended to inflict fatal injury on the deceased. He cited a number of authorities to support his argument. In *Virsa Singh v The State of Punjab* 1958 SCR 1495 which has been cited in a number of Malaysian cases to interpret the meaning of intention in the third limb, the Indian Supreme Court said as follows:

> In considering whether the intention was to inflict the injury found to have been inflicted, the enquiry necessarily proceeds on broad lines as, for example, whether

there was an intention to strike at a vital or a dangerous spot, and whether with sufficient force to cause the kind of injury found to have been inflicted. It is, of course, not necessary to enquire into every last detail as, for instance, whether the prisoner intended to have the bowels fall out, or whether he intended to penetrate the liver or the kidneys or the heart. Otherwise, a man who has no knowledge of anatomy could never be convicted, for, if he does not know that there is a heart or a kidney or bowels, he cannot be said to have intended to injure them. Of course, that is not the kind of enquiry. It is broad-based and simple and based on common sense: the kind of enquiry that 'twelve good men and true' could readily appreciate and understand.

[26] In the Privy Council case of *Mohamed Yasin bin Hussin v Public Prosecutor* [1976] 1 MLJ 156, the appellant sat on the chest of the victim with force. She suffered fractures on her ribs which caused congestion of the lungs that resulted in cardiac arrest. The injuries were sufficient in the ordinary course of nature to cause death. In overturning the conviction for murder and substituting it with a conviction under s 304A, Lord Diplock said as follows when discussing the element of intention:

In their Lordships' view, this fails to give effect to the distinction drawn in ss 299 and 300 of the Penal Code, in cases where the accused did not deliberately intend to kill, between the act by which death is caused and the bodily injury resulting from that act. In the instant case, the act of the appellant which caused the death, viz sitting forcibly on the victim's chest, was voluntary on his part. He knew what he was doing; he meant to do it; it was not accidental or unintentional. This, however, is only the first step towards proving an offence under s 300(c) of the Penal Code. Not only must the act of the accused which caused the death be voluntary in this sense; the prosecution must also prove that the accused intended, by doing it, to cause some bodily injury to the victim of a kind which is sufficient in the ordinary course of nature to cause death.

[27] Counsel for the appellant submitted firstly that the prosecution in the instant case failed to prove that the fatal injury, ie compression of the neck was an intended injury. He submitted that the trial judge took into account the purported confession of the appellant that he 'killed' the deceased and strangled (*cekik*) her in finding that there was evidence of intention. We considered the confession earlier and ruled that it was properly admitted into the evidence. Even, if were otherwise, it is our finding that the trial judge had ample evidence before him to conclude that the appellant intended to cause bodily injury to the deceased which was sufficient in the ordinary course of nature to cause death. The passage in the judgment of the trial judge that was criticised as a misdirection is as follows:

The gravity of the injuries inflicted on the deceased as found by the pathologist, clearly pointed out to an intention by the accused. The accused would know the changes on the face and the tongue of the deceased during the strangulation. Despite the severe condition of the deceased, he continued with the strangulation

A until she died. Her death was in fact brought about by the action of the accused. It was obvious that the accused had the intention of causing that injury to his ex-wife. As what PW3 said, the injury was in the natural course of nature could cause death.

B **[28]** Secondly, counsel for the appellant submitted that there was no intention to cause the said bodily injury, ie compression of the neck. It was dark in the early hours of the morning and that there was no evidence that the appellant could see the changes on the face and tongue of the deceased during the strangulation. He also submitted that there was no evidence that the appellant continued strangling the deceased as found by the trial judge.

C

[29] We find that interference with the trial judge's finding that the appellant intended to cause the bodily injury that is sufficient in the ordinary course of nature to cause death is not warranted. The pathologist explained in detail the
D cause of death. It was fatal compression of the neck which was caused by manual strangulation of the victim. He explained the evidence that he found upon examining the body that led him to conclude that the cause of death was strangulation apart from the information given to him. He said there was bluish discoloration of the face and tongue due to lack of oxygen. The tongue
E bite that was noted was due to pressure on the neck. He found fractures on the neck that were consistent with the victim being strangled. His summary of the evidence of strangulation is found in the following passage in the notes of proceedings:

F Q: In your findings you said cause of death 'fatal compression of neck'. Can you explain to the court what you mean by compression of neck?

A: My Lord compression of neck is evidence at autopsy in the form of injuries to the skin of the neck, congestion of the face, haemorrhage in the eyes, haemorrhage of struct muscle of the neck, haemorrhage of the soft tissue of the neck and fractures of
G the bone and cartilage of the neck (soft bone).

Q: Why you said that upon your examination 'injury to the neck structures were consistent with manual strangulation'.

A: My Lord it was opinion by conclusion there was no evidence of ligature mark on the neck so ligature strangulation was ruled out. Most importantly, the injuries to
H the neck/the haemorrhage on the neck was pre-dominantly on one side of neck that is the left side. With small haemorrhage on the right side. My Lord these are common findings in manual strangulation.

[30] During cross-examination, the pathologist further explained that the
I compression to the neck prevented the supply of oxygen. He said as follows:

The findings of this autopsy were associated to the lack of oxygen supply because of the blood vessel compression of the neck. That is why we found haemorrhage in the eyelids and congested face and haemorrhages around the face all. All this because of lack of oxygen. It's like a heart attack.

[31] The expertise of the pathologist who had conducted 5,000 autopsies in his long career was not successfully challenged. The appellant did not produce any expert rebuttal evidence in respect of the cause of death. The appellant said that he was physically attacked by the deceased who had tried to prevent him from leaving the hotel suite and that he defended himself. Be that as it may, both appellant and deceased were purportedly involved in a robust physical struggle as the appellant said he defended himself. The pathologist found a head injury on the deceased which he said may have rendered her partially unconscious before she was manually strangled. But the head injury was not the cause of death. The deceased died because she was strangled to death. By his own account, the appellant was the only person in the hotel suite with the deceased at the material time. As the medical evidence proved the cause of death was manual strangulation and the appellant and the deceased were locked in a physical struggle, the only inference that can be drawn is that the appellant had strangled the deceased to death. Therefore, the trial judge's finding on this point is not open to challenge unless, of course, for sake of argument, it was possible for the deceased to have strangled herself.

[32] As we mentioned earlier, the main complaint of counsel for the appellant is that the prosecution failed to prove that appellant intended to cause the injury that resulted in her death. In our opinion, the learned trial judge had correctly found that the element of intention was proved. The 'intention' in limb (c) of s 300 is the intention to cause the injury that would have been sufficient in the ordinary course of nature to cause death. Assuming that the deceased had died of head injury or multiple fracture to the ribs as in the case of *Mohamed Yasin bin Hussin v Public Prosecutor*, given the physical struggle between the parties and alleged resistance put up by the appellant, it is possible to argue that there was no intention to cause bodily injury that will cause death in the ordinary course of nature. However, as on the evidence, the appellant had undoubtedly strangled the deceased to death, in our view there is no room to argue that the infliction of the said bodily injury was unintentional or accidental. It is trite law that intention is a matter of inference as noted by the trial judge. In our view, whether the appellant could see the changes on the face of the deceased when he was strangling her, the relevant point is whether intention can be inferred from his act in strangling her. The serious injuries that the deceased suffered do not point to a momentary squeeze at the neck of the deceased in the heat of a struggle. The pathologist noted that bones around the neck including the cartilage and hyoid bone were fractured and the neck muscle and tissue were damaged. He said significant force was applied and it prevented oxygen supply. In short, the deceased was strangled to death. We are therefore of the view that the learned trial judge did not err in finding that the appellant intended to cause the injury that resulted in the death of the appellant. In the premises, we find no merit in the third issue.

Failure to appreciate defence

[33] The fourth and fifth issues raised by counsel for the appellant is that the trial judge did not properly appreciate the defence of the appellant and misdirected himself. He submitted that in order to invoke the defence of private defence, reasonable apprehension of danger on the part of the appellant is sufficient. The appellant need not be actually attacked or that there was actual continuing danger. Counsel for the appellant also submitted broadly that the defence of the appellant was not subjected to a fair and just assessment. He cited some eminent authorities and provisions of the Penal Code in respect of the principles to consider in determining whether the right to private defence had arisen. We shall cite some of them here.

[34] In *Palmer v R* [1971] 1 All ER 1077, Lord Palmer at the House of Lords said as follows at p 1088:

> If there has been attack so that defence is reasonably necessary it will be recognised that a person defending himself cannot weigh to a nicety the exact measure of his necessary defensive action. If a jury thought that in a moment of unexpected anguish a person attacked had only done what he honestly and instinctively thought was necessary that would be most potent evidence that only reasonable defensive action had been taken. A jury will be told that the defence of self-defence, where the evidence makes its raising possible, will only fail if the prosecution show beyond doubt that what the accused did was not by way of self-defence. But their Lordships consider in agreement with the approach in *De Freitas v R* that if the prosecution have shown that what was done was not done in self-defence then that issue is eliminated from the case.

[35] The above-mentioned passage has been quoted numerous times with approval by our courts starting with the Federal Court in *Lee Thian Beng v Public Prosecutor* [1972] 1 MLJ 248. The provisions of the Penal Code highlighted by counsel for the appellant are ss 100 and 102. The relevant part of s 100 is as follows:

> The right of private defence of the body extends, under the restrictions mentioned in the last preceding, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right is of any of the following descriptions:
>
> (a) such an assault as *may reasonably cause the apprehension* that death will otherwise be the consequence of such assault;
>
> (b) such an assault as *may reasonably cause the apprehension* that grievous hurt will otherwise be the consequence of such assault;
>
> (c)–(f) (Emphasis added.)

Section 102 reads as follows:

> The right of private defence of the body commences as soon as *a reasonable apprehension of danger to the body arises* from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long *as such apprehension of danger to the body continues*. (Emphasis added.)

[36] The above sections quite clearly enact that there is no requirement for the threatened offence to be committed or to continue against one who avails the defence of private defence. A reasonable apprehension of danger is sufficient as submitted by counsel for the appellant. However, we find nothing in the judgment of the trial judge that suggests that he misapplied the principles that are applicable to the defence of private defence.

[37] The learned trial judge said that no injury was seen on the appellant. We addressed this issue earlier. This finding is justified for reasons given earlier. The appellant did not tell the arresting officer that he was injured. The investigating officer did not notice any injury on the appellant. Whilst, it is true that there is no requirement for one to be actually attacked and injured to avail the defence of private defence under s 96 of the Penal Code, the learned trial judge had good reason to mention the absence of injuries on the appellant. The appellant told the court that the deceased had a volatile temper. She had been injured in the head when she was young and she could not control herself when upset. She was one and the half times heavier than him and had tossed him about eight to nine feet across the living room. He said his left leg bled. He was also thrown on the bed. The deceased had put her hand inside his mouth and attempted to push his tongue to the back. He said he was injured in the mouth and lips. It was in the midst of the physical attack on him that the appellant had grabbed her neck and pushed her in an attempt to save himself. But as we said earlier, the investigating officer or the arresting officer did not notice any injury on him. We are mindful that the appellant's blood was found in the fingernail clippings taken from the deceased. Nonetheless, that evidence is not indicative of serious injury inflicted on the appellant. It could well be the result of the defensive act of scratching by the deceased when she was being strangled. Although, the learned trial judge did not specifically mention 'reasonable apprehension of danger', from his findings it is obvious that the appellant had no reason at all to entertain such a notion and that it was an afterthought and a concoction. The appellant said he was defending himself. The pathologist said the hyoid bone which is in the front of the neck and the cartilages of the neck were fractured. The trial judge noted the evidence of the appellant that he was on top of the deceased at the bed. The strangulation cut the oxygen supply. Thus, as we noted earlier, a momentary choking or pushing at the neck of the deceased in the heat of the struggle could not have caused death by strangulation. The appellant could have extricated himself and moved away and he would not have been in any danger. The trial judge addressed this point in the following passage:

A It is perhaps pertinent to bear in mind that first, it was the accused own testimony that he was on the deceased's body during the struggle. He was on the top of the deceased's body. Secondly, there was no injury seen on him. Hence, by no stretch of the imagination could these constitute evidence in relation to private defence. There was no threat of injuring his life.

B **[38]** In this context, we note that s 99(4) of the Penal Code prohibits infliction of unnecessary harm when protecting oneself. It reads as follows:

(4) The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

C **[39]** We also note that the deceased did not use any weapon when she allegedly attacked the appellant. In fact, it was the deceased who had been injured in the head by a hard object before she was strangled to death. The learned trial judge who is the primary trier of fact had considered the lengthy testimony of the appellant who at one point gave a very detailed account of the D struggle between him and the deceased from the living room of the hotel suite to the bedroom. However, he disbelieved the appellant and found that his defence did not raise reasonable doubt on the case for the prosecution. We find no reason to interfere with this finding of fact as it is consistent with the E medical evidence and the circumstantial evidence that we adverted to earlier. We also note that a general exception defence in the Penal Code such as private defence has to be proven by the appellant under s 105 of the Evidence Act 1950 on a balance of probabilities (see *Lee Thian Beng v Public Prosecutor*). We are mindful that the trial judge actually imposed a lower burden on the appellant F and therefore no prejudice was occasioned.

[40] In the final oral reply submission, counsel for the appellant raised the issue that grave and sudden provocation could have been given by the deceased or that a sudden fight that occurred between them could bring the case within G the exceptions to s 300 and thereby avail the appellant the benefit of a lesser charge under s 304 of the Penal Code. The defence never raised the exceptions to s 300 in the trial court. Nonetheless, the trial court could consider whether the case came within the exceptions at the end of the whole case. However, in the instant case, no evidence at all was led either by the prosecution or the H defence to bring the case within the said exceptions. The appellant never said that he acted under grave and sudden provocation or that he killed the deceased in a sudden fight in the heat of passion. The sole line of defence taken was that the appellant acted in self-defence when attacked by the deceased.

I CONCLUSION

[41] For reasons given above, we find no merit in any of the issues canvassed before us. The learned trial judge did not commit any appealable error and we find that the conviction is safe. We affirm the conviction and sentence. The appeal is dismissed.

Appeal dismissed; conviction and sentence affirmed.

Reported by Dzulqarnain bin Ab Fatar